

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT**

vs.

**ALAN JOHN GORMAN,
APPELLANT**

DOCKET NUMBER WD77684

DATE: AUGUST 18, 2015

Appeal from:

The Circuit Court of Cass County, Missouri
The Honorable William B. Collins, Judge

Appellate Judges:

Before Division One: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

Attorneys:

Karen L. Kramer, for Respondent

Samuel E. Buffaloe, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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STATE OF MISSOURI, RESPONDENT

v.

ALAN JOHN GORMAN, APPELLANT

WD77684

Cass County, Missouri

Before Division One Judges: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

In 2014, Appellant Alan Gorman was charged by superseding indictment with one count of first-degree statutory sodomy, one count of first-degree child molestation, and one count of second-degree child molestation. The charges arose in 2012 after Appellant's stepdaughter, T.B., told her grandparents that Appellant had molested her.

At trial, Appellant made an offer of proof in which he sought to introduce testimony that T.B. had been told that she had been molested by her biological father. Appellant indicated that he believed the offer would establish his defense of false projection – namely that T.B. was projecting the abuse by her biological father onto Appellant. In the offer of proof, T.B. testified that, in 2011, Appellant and her mother told her that Appellant was not her biological father and that her biological father had molested her as a young child. T.B. further testified that she had no conscious recollection of the molestation but that she had had one or two “flashes” that were incomplete and nonspecific. The State argued that the evidence should be excluded under the rape shield statute and as inadmissible hearsay. The trial court concluded that the evidence was inadmissible.

The jury subsequently found Appellant guilty of first-degree statutory sodomy and first-degree child molestation but acquitted him on the count of second-degree child molestation. Appellant now raises two points of error on appeal.

AFFIRMED

Division One holds:

(1) The trial court did not err in excluding evidence that T.B. had previously been molested by her biological father because the offer of proof failed to establish that the evidence was relevant in that Appellant argued that the offer of proof would establish his defense of false projection but the fact that T.B. had been told she was molested by her biological father did little to establish that false projection had occurred and does not make it any more or less probable that Appellant committed the charged offenses.

(2) The trial court did not err to the extent it excluded the evidence in the offer of proof on the basis of the rape shield statute. The trial court did not apply the rape shield statute in such a way that it violated Appellant's constitutional right to a fair trial. Appellant was not attempting to use evidence that T.B. had previously been molested in order to counter the State's evidence. Rather, Appellant sought to introduce such evidence to establish his defense of false projection. And although a defendant has a constitutional right to present a complete defense, the offer of proof did little to establish a defense of false projection and was too speculative and remote to warrant admission. Accordingly, the trial court did not abuse its discretion in excluding the proffered evidence.

(3) The trial court did not plainly err to the extent that it excluded the evidence on the basis of the rape shield statute in that Appellant cannot now claim that the rape shield statute does not apply when he injected the issue of the rape shield statute and made repeated assertions throughout the case's pendency and at trial that the rape shield statute applied. We will not convict the trial court of error of the Appellant's own making.

Opinion by Joseph M. Ellis, Judge

Date: August 18, 2015

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